

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KEVIN MULRINE,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 06-3903
	:	
AIR CONTACT TRANSPORT, INC.,	:	
Defendant.	:	

MEMORANDUM AND ORDER

Stengel, J.

September 11, 2006

The plaintiff initiated this case in the Court of Common Pleas of Lehigh County, Pennsylvania. Defendant was served with praecipe for summons and summons on civil action on July 18, 2006. The documents do not indicate the basis for the plaintiff's claims. On August 4, 2006, the plaintiff sent the defendant a letter informing the defendant that the case related to plaintiff's earlier ADA charge filed with the Equal Employment Opportunity Commission ("EEOC"). As a result of the letter the defendant filed a Notice of Removal with this Court. No complaint has been filed by the plaintiff to date.

Discussion

The relevant portion of the removal statute states:

The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

28 U.S.C. § 1446(b). In Sikirica v. Nationwide Ins. Co., 416 F.3d 214 (3d Cir. 2005), the Third Circuit held, in discussing the removal of a case from a Pennsylvania state court to a federal district court, “a writ of summons alone can no longer be the ‘initial pleading’ that triggers the 30-day period for removal under the first paragraph of 28 U.S.C. 1446(b).” Id. at 223. The Court also looked to the general specifics of a writ of summons in Pennsylvania, and found that it was insufficient to notify the defendant what the action was about and the relief sought. See also Gladkikh v. Lyle Industries, Inc., No. 3:CV-0502402, 2006 U.S. Dist. LEXIS 6698 (M.D. Pa. Feb. 1, 2006).

In this case, no “initial pleading” has been filed. The summons is insufficient to satisfy the requirements of § 1446(b). The correspondence between the parties, although providing notice of the type of action, does not qualify as an initial pleading under the statute. With no initial pleading filed, the time to remove this case to federal court has not been triggered. The thirty day window for removal has not been opened. Therefore, I am rejecting the defendant’s attempt to remove this case on the grounds that the notice of removal was filed prematurely. The Court grants the defendant leave to re-file its notice of removal within thirty days of when the complaint in the state action is served on the defendant.

An appropriate Order follows.

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ORDER

AND NOW, this 11th day of September, 2006, it is hereby **ORDERED** that the defendant's Notice of Removal (Docket No.1) is **REJECTED** for being prematurely filed and the case is **REMANDED** to the Court of Common Pleas of Lehigh County, Pennsylvania.

The Clerk of Court shall mark this case **CLOSED** for statistical purposes.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.